

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of  
Northern States Power Company d/b/a  
Xcel Energy for Certificates of Need for  
Four Large High Voltage Transmission  
Line Projects in Southwestern Minnesota

**ORDER DENYING MOTION TO COMPEL  
DISCOVERY**

Public Intervenors Network (PIN) brought a Motion to Compel Discovery on July 23, 2002. Northern States Power Company d/b/a Xcel Energy (Xcel) filed its opposition to the motion on August 2, 2002. No other party has taken a position on the Motion.

Appearances of counsel are on file.

IT IS HEREBY ORDERED:

PIN's Motion to Compel Discovery is DENIED.

Dated this 8<sup>th</sup> day of August, 2002

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BEVERLY JONES HEYDINGER  
Administrative Law Judge

**MEMORANDUM**

On July 23, 2002, PIN brought a Motion to Compel Discovery. It requested an Order compelling Xcel to do some additional modeling of electrical line losses. The motion requests the administrative law judge to reconsider the same motion brought by PIN on June 24, 2002. That motion was argued orally on June 25, 2002, and denied.<sup>[1]</sup>

There is no provision under the Rules of the Office of Administrative Hearings to reconsider a discovery motion. Nor is there such a rule under the Rules of Civil Procedure. It is analogous to a motion to reconsider pursuant to Minnesota Rules of General Practice 115.11. Such motions may be appropriate where there have been intervening legal developments or where the prior decision is clearly wrong. In some instances reconsideration may be warranted to correct a clear error.<sup>[2]</sup> However, such

motions should not be allowed to reargue the same facts or press the same points previously presented. PIN's claims now are the same as they were on June 24, 2002.

The purpose of discovery is to ascertain information that is “reasonably calculated” to lead to admissible evidence.<sup>[3]</sup>

It is acknowledged that Xcel's application in this proceeding was voluminous and that the importance of electrical line losses in the choice of Xcel's preferred option may not have been initially obvious. However PIN's own expert identified its importance and challenged Xcel's methodology in his prefiled testimony.<sup>[4]</sup> Line losses were discussed at length during cross-examination of Richard Gonzalez, one of Xcel's chief witnesses.

During the time allowed for discovery concerning Option 1H, the Environmental Quality Board requested information about the actual electrical value of power “exported” from North Dakota (NDEX). Xcel provided that information from June 2, 2001 through June 2, 2002. It showed a fluctuating graph, with values from –569 megawatts to 1493 megawatts and an annual average of 519 megawatts.<sup>[5]</sup> PIN contends that Xcel should be compelled to do additional modeling using the “average NDEX and “average” wind output.

PIN's motion is denied. It is untimely since the evidentiary hearing concluded on July 3, 2002. The motion is identical to the one denied on June 25, 2002. There is no basis for reconsidering the prior decision.

In addition its not clear that the results of the modeling requested would be material. The request assumes certain additional facts: that the NDEX “average” for 2001-2002 is an appropriate average for projecting future average NDEX, and that the days when the NDEX is average significantly overlap with the days when the anticipated wind output is “average”. Even if there is significant overlap, PIN has not explained how modeling on such a day or days would be extrapolated to an annualized loss figure. Thus PIN has failed to explain how the modeling would lead to material information.

It is Xcel's burden to show that its application is supported by a preponderance of the evidence. PIN is free to argue that Xcel has failed to meet that burden, but it is too late to compel Xcel to perform modeling that may or may not lead to any useful information.

**B.J.H.**

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<sup>[1]</sup> Transcript vol. 22 at pages 17-56; vol. 23 at 5-8.

<sup>[2]</sup> See comments to Minn. Gen. R. Prac. 115.11.

<sup>[3]</sup> Minn. R. Civ. P. 26.02 (a).

<sup>[4]</sup> Ex. 601 at 9-11.

<sup>[5]</sup> Ex. 643.